



PUBLIC NOTICE

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WIRELINER COMPETITION BUREAU ANNOUNCES RURAL BROADBAND EXPERIMENTS SUPPORT FOR 13 PROVISIONALLY SELECTED BIDS IS READY TO BE AUTHORIZED

Listed Rural Broadband Experiment Provisionally Selected Bidders Must Submit Letters of Credit and Legal Counsel's Opinion Letters by September 29, 2015

WC Docket No. 10-90
WC Docket No. 14-259

By this Public Notice, the Wireline Competition Bureau (Bureau) announces that it is ready to authorize rural broadband experiments support for the provisionally selected bids identified in the Attachment of this Public Notice.¹ The bids that are ready to be authorized cover 3,332 census blocks in eight states for a total of \$21,319,723.71 in support. To be authorized to receive the support listed in the Attachment, the provisionally selected bidders identified in that attachment are required to submit at least one acceptable irrevocable stand-by letter of credit (LOC) and Bankruptcy Code opinion letter from their legal counsel in accordance with the instructions provided below by the applicable deadline – **September 29, 2015 at 11:59 p.m. ET.**² We also affirmatively remove three additional provisionally selected bidders from further consideration that either withdrew or failed to meet certain post-selection requirements.

On December 5, 2014, the Bureau announced the first round of provisionally selected bidders for the rural broadband experiments.³ On March 4, 2015, the Bureau announced a second round of provisionally selected bidders.⁴ Within 10 business days of the public notice announcing the

¹ The Bureau announced that it was ready to authorize 15 provisionally selected bids in May 2015. See *Wireline Competition Bureau Announces Rural Broadband Experiments Support for 15 Provisionally Selected Bids is Ready to be Authorized and Releases Updated Frequently Asked Questions*, WC Docket Nos. 10-90 and 14-259, Public Notice, 30 FCC Rcd 5038 (Wireline Comp. Bur. 2015) (*May 2015 Ready to Authorize Public Notice*). A number of those bids were then authorized to begin receiving rural broadband experiment support. *Rural Broadband Experiment Support Authorized for Ten Winning Bids for Skybeam, LLC, Consolidated Communications Networks, Inc., Delta Communications LLC, and Allamakee-Clayton Electric Cooperative, Inc.*, WC Docket Nos. 10-90 and 14-259, Public Notice, DA 15-897 (Wireline Comp. Bur. rel Aug. 7, 2015) (*Aug. 2015 Authorization Public Notice*); *Rural Broadband Experiment Support Authorized for Five Winning Bids for First Step Internet, LLC and Northeast Rural Services, Inc.*, WC Docket Nos. 10-90 and 14-259, Public Notice, DA 15-1003 (Wireline Comp. Bur. rel. Sept. 11, 2015).

² *Connect America et al.*, WC Docket Nos. 10-90 and 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8788-93, paras. 54-71 (2014) (*Rural Broadband Experiments Order*).

³ *Wireline Competition Bureau Announces Entities Provisionally Selected for Rural Broadband Experiments; Sets Deadlines for Submission of Additional Information*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 14684 (Wireline Comp. Bur. 2014) (*Round One Provisionally Selected Bidders Public Notice*).

⁴ *Wireline Competition Bureau Announces Additional Provisionally Selected Bidders for Rural Broadband Experiments and Sets Deadlines for Submission of Additional Information*, WC Docket Nos. 10-90 and 14-259,

provisionally selected bidders, these entities were required to submit technical and financial information, including the most recent three consecutive years of audited financial statements, a description of the technology and system design that will be used to deliver voice and broadband service, including a network diagram certified by a professional engineer, and for entities proposing to use wireless technologies, a description of spectrum access requirements.⁵ Within 60 days of the public notice, provisionally selected bidders were required to submit a letter from an acceptable bank committing to issue an irrevocable stand-by LOC.⁶ And within 90 days of the public notice, provisionally selected bidders were required to submit appropriate documentation of their eligible telecommunications carrier (ETC) designations in all of the areas for which they will receive support and certify that the information submitted is accurate.⁷

For each of the provisionally selected bidders identified in the Attachment, the Bureau has reviewed the submitted materials. Based on our review, the Bureau is prepared to authorize support for the provisionally selected bids identified in the Attachment, subject to submission of the required LOC(s) and Bankruptcy Code opinion letter(s) for the identified bids.

Technical and Financial Information. We find that all of the provisionally selected bidders listed in the Attachment have submitted the required technical and financial information for the identified bids. Based on our review of these materials, we conclude that we are ready to authorize these bidders.⁸

LOC Commitment Letter. We find that all of the provisionally selected bidders listed in the Attachment have submitted timely letters from a bank meeting the Commission's requirements committing to issue an irrevocable stand-by original LOC to that entity.⁹

ETC Designation. We find that each of the provisionally selected bidders listed in the Attachment has submitted documentation that demonstrates that it has obtained ETC designation from the relevant state authority to serve the census blocks covered by the provisionally selected bids listed in the Attachment.

We find good cause to grant Skybeam, LLC's (Skybeam),¹⁰ Midwest Energy Cooperative d/b/a Midwest Connections' (Midwest),¹¹ and Paul Bunyan Rural Telephone Cooperative's (Paul Bunyan)¹²

Public Notice, 30 FCC Rcd 2045 (Wireline Comp. Bur. 2015) (*Round Two Provisionally Selected Bidders Public Notice*).

⁵ *Rural Broadband Experiments Order*, 29 FCC Rcd at 8787, paras. 52, 54.

⁶ *Id.* at 8787-88, para. 54.

⁷ *Id.* at 8778-79, 8788, paras. 22-23, 54.

⁸ *Id.* at 8787, para. 52.

⁹ *Id.* at 8787, para. 54.

¹⁰ Skybeam, LLC Petition for Waiver of Deadline for ETC Designations, WC Docket No. 10-90 et al. (filed Mar. 5, 2015) (Skybeam Petition). Skybeam is seeking a petition for waiver of the deadline for its Nebraska ETC designation for bid numbers 4 & 11 and its Iowa ETC designation for bid number 10. We note that the Bureau previously granted Skybeam's petition in part for the bids that the Bureau has already authorized. *May 2015 Ready to Authorize Public Notice*, 30 FCC Rcd at 5039-40.

¹¹ Petition for Waiver and Request for Extension of Time to File Proof of ETC Designation of Midwest Energy Cooperative d/b/a Midwest Connections, WC Docket Nos. 10-90 and 14-259 (filed May 27, 2015) (Midwest Petition).

¹² Paul Bunyan Rural Telephone Cooperative Petition for Limited Waiver of Deadline to Submit ETC Designation Documentation for Rural Broadband Experiments, WC Docket Nos. 10-90 and 14-259 (filed May 15, 2015) (Paul Bunyan Petition).

petitions for waiver of the deadlines for obtaining an ETC designation.¹³ In the *Rural Broadband Experiments Order*, the Commission stated that a waiver of the ETC deadline “may be appropriate if a winning bidder is able to demonstrate that it has engaged in good faith to obtain ETC designation, but has not received approval within the 90-day timeframe.”¹⁴ The Commission also noted it would “presume an entity to have shown good faith” in attempting to obtain an ETC designation by the deadline if that entity filed its application within the 15 days of the public notice announcing that the entity had been selected as a provisionally selected bidder.¹⁵

Skybeam filed its initial ETC designation applications with the Iowa Utilities Board (IUB) and the Nebraska Public Service Commission (NPSC) on December 19, 2014, within 14 days of the December 5, 2014 public notice announcing Skybeam as a provisionally selected bidder,¹⁶ and Midwest filed its ETC designation application with the Michigan Public Service Commission (MPSC) on March 19, 2015, within 15 days of the March 4, 2015 public notice announcing Midwest as a provisionally selected bidder.¹⁷ We therefore conclude that Skybeam and Midwest demonstrated a good faith effort to obtain their ETC designations, and we find that it serves the public interest to allow them to submit evidence of their designations after the relevant deadline.¹⁸

Additionally, we find that it will serve the public interest to grant Paul Bunyan’s petition for limited waiver of the deadline for submitting proof of ETC designation. Paul Bunyan is an existing ETC that serves as an incumbent local exchange carrier in portions of Minnesota. It previously had received approval to operate as a competitive local exchange carrier (CLEC) in the geographic areas where it was a provisionally selected bidder. While gathering its documentation for submission to the Commission, Paul Bunyan discovered that while it had previously received authority to operate as a CLEC in the relevant areas, it had not obtained an ETC designation for those areas.¹⁹ Within days of this discovery, it submitted a petition to the Minnesota Public Utilities Commission seeking ETC designation for the areas

¹³ The Commission delegated to the Bureau the authority to act on petitions for waiver of the ETC designation deadline. *Rural Broadband Experiments Order*, 29 FCC Rcd at 8788, para. 54 n.95. See also 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *Northeast Cellular*, 897 F.2d at 1166.

¹⁴ *Rural Broadband Experiments Order*, 29 FCC Rcd at 8778, para. 22 n.52.

¹⁵ *Id.* at 8778, para. 22 n.52.

¹⁶ Skybeam Petition at 2; *Round One Provisionally Selected Bidders Public Notice*, 29 FCC Rcd 14684.

¹⁷ Midwest Petition at 4; *Round Two Provisionally Selected Bidders Public Notice*, 30 FCC Rcd 2045.

¹⁸ For Skybeam whose ETC deadline was March 5, 2015, the IUB issued an order designating Skybeam as an ETC in Iowa on March 9, 2015, and the NPSC issued an order designating Skybeam as an ETC in Nebraska on June 2, 2015. *Skybeam, LLC*, Docket Nos. ETA-2014-0005, WRU-2014-0018-4424, Order Designating Eligible Carrier and Granting Waiver (Iowa Util. Bd. rel. Mar. 9, 2015); *Application of Skybeam, LLC, Englewood, Colorado, Seeking Designation as an Eligible Telecommunications Carrier for the Purpose of Participating in the Federal Communications Commission’s Rural Broadband Experiment Program and to Offer Lifeline Service to Qualifying Households*, Application No. C-4734/NUSF-101, Order (Neb. Pub. Serv. Comm’n. rel. June 2, 2015). For Midwest whose ETC deadline was June 2, 2015, the MPSC issued an order designating Midwest as an ETC in Michigan on June 3, 2015. *Midwest Energy Cooperative, d/b/a Midwest Connections, for Designation as an Eligible Telecommunications Carrier in the State of Michigan*, Case No. U-17861, Order (Mich. Pub. Serv. Comm’n. rel. June 3, 2015).

¹⁹ Paul Bunyan Petition at 2-3.

with provisionally selected bids where it already was authorized to operate as a CLEC.²⁰ The Minnesota Public Utilities Commission designated Paul Bunyan as an ETC in those areas on July 31, 2015.²¹

We find that there is good cause to waive the June 2nd ETC filing deadline in this specific circumstance. Paul Bunyan acted within days of determining that it had not received ETC designation at the time it was certificated to operate as a CLEC in the exchanges in question, and it submitted its ETC designation application in advance of the Commission's deadline for submission of proof of ETC designation. Because Paul Bunyan received its ETC designation in less than two months after the June 2nd deadline, the Bureau's post-selection review of Paul Bunyan and the distribution of rural broadband experiment support were not unreasonably delayed. Moreover, unlike in earlier instances where the Bureau denied petitions for waiver of filing deadlines, the timing of Paul Bunyan's ETC designation did not delay the Bureau's ability to extend the offer of model-based support to the price cap carriers.²² The census blocks in question had already been removed from the Phase II offer of model-based support. Denying the requested waiver of this filing deadline at this juncture would merely deprive consumers in the proposed service area of the opportunity to receive robust broadband service from a qualified provider willing to serve them. Accordingly, we grant Paul Bunyan's petition for waiver of the June 2nd deadline and find that it has met the requirements for submission of documentation of its ETC designation in Minnesota.

LOC and Opinion Letter Requirement. No later than 10 business days after the release of this Public Notice, the provisionally selected bidders identified in the Attachment must submit at least one irrevocable stand-by signed LOC, issued in substantially the same form as set forth in the model LOC provided in Appendix A of the *Rural Broadband Experiments Order* by a bank that is acceptable to the Commission.²³ The Bureau previously released information regarding LOCs that provisionally selected bidders may find helpful in obtaining their LOCs.²⁴ At a minimum, the LOC must be equal to the amount of the first disbursement of support.²⁵ We note that Daktel Communications LLC, Douglas Services, Inc., Midwest Energy Cooperative d/b/a Midwest Connections, and Skybeam elected to receive 30 percent of their total support upfront in exchange for meeting accelerated deployment obligations.²⁶

Provisionally selected winners may submit a separate LOC for each of their bids identified in the Attachment, or may submit one LOC that covers all of their bids identified in the Attachment. Note that the LOC attached in Appendix A of the *Rural Broadband Experiments Order* does not permit partial draws.²⁷ Thus, if a provisionally selected winner submits one LOC and one opinion letter that covers all of its bids, those bids will be considered one project for determining whether the provisionally selected winner has defaulted. If the provisionally selected winner defaults on one of the projects and does not

²⁰ Paul Bunyan submitted its ETC petition on May 8, 2015.

²¹ *Petition of Paul Bunyan Rural Telephone Cooperative for Designation as an Eligible Telecommunications Carrier*, Docket No. P-423/M-15-433, Order (Minn. Pub. Util. Comm'n rel. July 31, 2015).

²² See, e.g., *Connect America Fund, Rural Broadband Experiments*, WC Docket Nos. 10-90 and 14-259, Order, 30 FCC Rcd 2022, 2023, para. 3 (Wireline Comp. Bur. 2015); *Connect America Fund, Rural Broadband Experiments*, WC Docket Nos. 10-90 and 14-259, Order, 30 FCC 6258-60, paras. 4, 8.

²³ *Rural Broadband Experiments Order*, 29 FCC Rcd at 8788, 8805, para. 54, App. A.

²⁴ See *Wireline Competition Bureau Reminds Provisionally Selected Rural Broadband Experiments Bidders of Letter of Credit Requirements*, WC Docket Nos. 10-90 and 14-259, Public Notice, 29 FCC Rcd 333 (Wireline Comp. Bur. 2015).

²⁵ *Id.* at 8791, para. 62.

²⁶ *Id.* at 8794, para. 75.

²⁷ *Rural Broadband Experiments Order*, 29 FCC Rcd at 8806, App. A.

cure the default within the allotted timeframe, the Bureau will draw on the LOC for all of the support that has been disbursed for all of the bids covered by the LOC.²⁸

The *Rural Broadband Experiments Order* lists specific requirements for a bank to be acceptable to the Commission to issue the LOC.²⁹ Those requirements vary for U.S. banks and non-U.S. banks. In addition, a provisionally selected bidder is required to provide with its LOC(s) at least one opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations and qualifications, that, in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat, under section 541 of the Bankruptcy Code, the LOC or proceeds of the LOC as property of the provisionally selected bidder's bankruptcy estate, or the bankruptcy estate of any other rural broadband experiments recipient-related entity requesting issuance of the LOC.³⁰ If a provisionally selected bidder chooses to submit a separate LOC for each bid, it may submit an opinion letter for each of its bids, or may submit an opinion letter that covers all of its LOCs. The opinion letter(s) must not be dated at an earlier date than the issue date of the LOC(s) and should reference the specific LOC(s).

After reviewing the LOCs and opinion letters submitted by the provisionally selected bidders identified in this Public Notice, the Bureau will authorize support for the specific provisionally selected bidders for which all requirements, including submission of the LOC(s) and opinion letter(s), have been met.³¹

Instructions for Submission of Letter of Credit and Opinion Letter. Provisionally selected bidders identified in the Attachment of this Public Notice must submit at least one LOC and one opinion letter for the provisionally selected bids identified in the Attachment. The LOC(s) and opinion letter(s) must reference the relevant study area code listed in the Attachment.

The original of the LOC(s) and opinion letter(s) must be submitted to the Universal Service Administrative Company by the applicable deadline – **September 29, 2015 at 11:59 p.m. ET**, at the following address: Rural Broadband Experiments LOC, USAC, 2000 L Street NW, Suite 200, Washington, DC 20036. We recommend that each provisionally selected bidder send the original of the LOC(s) and the opinion letter(s) by means of delivery requiring signature. These documents may be sent to the attention of Joanne Kim.

A copy of the LOC(s) and opinion letter(s) must also be uploaded to the FCC Form 5620 by the applicable deadline. An applicant must provide this required information in two attachments. The LOC attachment should be designated as "Letter of Credit" and the opinion letter attachment should be designated as "Opinion Letter." Provisionally selected bidders do not need to upload interim drafts of the LOC(s) and opinion letter(s) to FCC Form 5620 after they have upload their initial LOC(s) and opinion letter(s) by the deadline, but they should submit the final version of their LOC(s) and opinion letter(s) to FCC Form 5620 after they have received approval.

Any provisionally selected bidder that fails to meet this deadline will no longer be eligible to receive rural broadband experiments support for the relevant bids.

We also take this opportunity to affirmatively remove three provisionally selected bidders from further consideration for rural broadband experiment support. Both Southwest Arkansas Telephone Cooperative and West Central Telephone Association withdrew their provisionally selected bids from further consideration.³² Additionally, the City of Chanute, Kansas missed both the May 4th letter of

²⁸ *Id.* at 8798-800, paras. 88-96 (explaining the non-compliance measures for the rural broadband experiments).

²⁹ *Id.* at 8790, para. 59.

³⁰ *Id.* at 8789, para. 58.

³¹ *Id.* at 8788, para. 54.

³² See Letter from Lane Powers, Vice President, Network Operations, Southwest Arkansas Telephone Cooperative, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed June 25, 2015); Letter from Chad Bullock,

credit commitment letter submission deadline and the June 2nd ETC designation documentation submission deadline after being announced as a provisionally selected bidder.³³

For additional information on this proceeding, contact Heidi Lankau (Heidi.Lankau@fcc.gov) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

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Chief Executive Officer, West Central Telephone Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Apr. 2, 2015).

³³ See *Round Two Provisionally Selected Bidders Public Notice*, 30 FCC Rcd at 2047, Attach. The City of Chanute, Kansas did not submit a letter of credit commitment letter or documentation showing that it had obtained an ETC designation for the relevant census blocks. It also did not file a petition for waiver of these document submission deadlines.

Attachment
Ready to Authorize Provisionally Selected Bidders and Bids

Category One

Bidder Name	State	Selected Bid Project ID	Selected Bid Amount	Census Blocks Covered by Selected Bid	Study Area Code
Daktel Communications LLC					
	ND	1	\$875,000.00	109	386128
Douglas Services, Inc.					
	OR	1	\$2,375,000.00	325	536129
Federated Telephone Cooperative					
	MN	2	\$1,455,961.71	95	366130
Midwest Energy Cooperative d/b/a Midwest Connections					
	MI	1	\$211,532.00	31	316131
Paul Bunyan Rural Telephone Cooperative					
	MN	1	\$1,005,000.00	71	366132
	MN	3	\$957,000.00	63	366133
Skybeam, LLC (continued on next page) ³⁴					
	IA	1	\$3,550,244.00	496	356134
	IA	9	\$2,183,630.00	269	356135

³⁴ Skybeam was previously authorized to begin receiving rural broadband experiment support for bids numbers 2, 3, 7 & 8. *Aug. 2015 Authorization Public Notice*, DA 15-897. Skybeam withdrew bid number 6 from consideration. See Letter from Jeff Kohler, Chief Development Officer, Skybeam, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90 and 14-259 (filed Mar. 30, 2015).

Bidder Name	State	Selected Bid Project ID	Selected Bid Amount	Census Blocks Covered by Selected Bid	Study Area Code
Skybeam, LLC (continued from previous page)					
	IA	10	\$572,380.00	267	356136
	NE	4	\$2,396,730.00	685	376137
	NE	11	\$1,342,723.00	388	376138
	TX	5	\$2,372,403.00	275	446139

Category Three

Bidder Name	State	Selected Bid Project ID	Selected Bid Amount	Census Blocks Covered by Selected Bid	Study Area Code
Northern Valley Communications, LLC					
	SD	2	\$2,022,120.00	258	396340